

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

JIBRI CUNNINGHAM,

Petitioner,

v.

Case No. 2:22cv358

WARDEN H. QUAY,

Respondent.

FINAL ORDER

Before the Court is a Petition for a Writ of Habeas Corpus, filed pursuant to 28 U.S.C. § 2241. Pet., ECF No. 1. In his Petition, the *pro se* Petitioner seeks to receive presentence custodial credit for his time spent incarcerated prior to his federal sentencing date. *Id.* at 2–8. Respondent filed Motion for Summary Judgment with a supporting brief on March 1, 2023. ECF Nos. 8, 9. Petitioner filed a response, as well as his own Motion for Summary Judgment on April 20, 2023. ECF Nos. 16, 17. Respondent filed a combined response to Petitioner’s motion and reply to Respondent’s motion.¹ ECF No. 14.

This matter was referred for disposition to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B)–(C), Federal Rule of Civil Procedure 72(b), Local Civil Rule 72, and the April 2, 2002, Standing Order on Assignment of Certain Matters to United States Magistrate Judges. In a Report and Recommendation entered on January 29, 2024, the Magistrate Judge recommended dismissal of the Petition with prejudice on the grounds that Petitioner received the proper presentence custodial time to which he was entitled. R. & R. at 6–12, ECF No. 20. Petitioner timely filed objections

¹ Respondent received Petitioner’s response via mail before it was docketed with the Court. See ECF No. 22 n. 1.

to the Report and Recommendation, ECF No. 21, and Respondent filed a response to Petitioner's objections, ECF No. 22.

Having reviewed the record and examined the objections filed by Petitioner to the Report and Recommendation, and having made *de novo* findings with respect to the portions objected to, the Court ADOPTS and APPROVES the Report and Recommendation, ECF No. 20, in its entirety as the Court's own opinion. It is ORDERED that Respondent's Motion for Summary Judgment, ECF No. 8, be GRANTED; Petitioner's Motion for Summary Judgment, ECF No. 16, be DENIED; and that the Petition, ECF No. 1, be DISMISSED WITH PREJUDICE. It is further ORDERED that judgment be entered in favor of the Respondent.


Finding that the basis for dismissal of Petitioner's section 2241 petition is not debatable, and alternatively finding that Petitioner has not made a "substantial showing of the denial of a constitutional right," a certificate of appealability is DENIED. 28 U.S.C. § 2253(c); *see* Rules Gov. § 2254 Cases in U.S. Dist. Cts. 11(a); *Miller-El v. Cockrell*, 537 U.S. 322, 335–38 (2003); *Slack v. McDaniel*, 529 U.S. 473, 483–85 (2000).

Petitioner is ADVISED that because a certificate of appealability is denied by this Court, he may seek a certificate from the United States Court of Appeals for the Fourth Circuit. Fed. R. App. P. 22(b); Rules Gov. § 2254 Cases in U.S. Dist. Cts. 11(a). If Petitioner intends to seek a certificate of appealability from the Fourth Circuit, he must do so within thirty (30) days from the date of this Order. Petitioner may seek such a certificate by filing a written notice of appeal with the Clerk of the United States District Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510.

The Clerk shall forward a copy of this Order to Petitioner and to counsel of record for the Respondent.

It is so ORDERED.

Norfolk, Virginia
Date: March 15, 2024



Elizabeth W. Hanes
United States District Judge

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United States District Judge